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Regulatory
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Fast Track Proposed Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5-70
Regulation title	Other Provisions
Action title	Conforming various regulations to statutory changes and price increase reporting
Date this document prepared	August 11, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The Alcoholic Beverage Control Board is proposing amendments to its general regulations which would (1) conform exceptions to the general prohibition against licensees giving away alcoholic beverages to recent actions of the General Assembly, (2) remove the requirement that manufacturers give the board a copy of any price increase notice, (3) provide that in situations where the same person is both the importer and wholesaler, no notice of price increase is required, (4) increase the number of allowed farm winery remote locations from 2 to 5, as allowed by statute, and (5) set forth procedures for auction sales of designer or antique bottles containing distilled spirits.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On August 1, 2006, the Alcoholic Beverage Control Board adopted amendments to 3 VAC 5-70, Other Provisions.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Title 4.1 of the Code of Virginia gives the Alcoholic Beverage Control Board general authority to regulate the manufacture, distribution and sale of alcoholic beverages within the Commonwealth, including the authority to promulgate regulations which it deems necessary to carry out the provisions of Title 4.1, in accordance with the Administrative Process Act. Sections 4.1-103 and 4.1-111 mandate that the Board promulgate regulations, but details are left to the Board's discretion.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This action is intended to revise several of the Alcoholic Beverage Control Board's provisions governing manufacturers and wholesalers of alcoholic beverages. The amended sections will expand the ability of manufacturers and wholesalers to participate in tasting events at licensed premises as allowed by the 2006 General Assembly; remove an unnecessary price change reporting requirement for licensees serving as both importer and wholesaler of a product; and increase the number of remote retail locations available to farm wineries in accordance with a recent statutory change. A new section will be added creating a procedure for sale by auction of designer or vintage spirits bottles.

The goals of this regulation are:

1. To maintain reasonable controls on the transportation, storage, and sale of alcoholic beverages in the Commonwealth through a permit procedure for transporting alcoholic beverages through the Commonwealth, sacramental wine, culinary uses, hospital, industrial or manufacturing uses, contract distilling, bonded and out of bond warehouse operations, sale of beer in kegs, and grain alcohol;
2. To require licensees of the Board to maintain sufficient records of purchases and sales of alcoholic beverages to ensure regulatory compliance without unreasonable burden;
3. To provide a reasonable means for first-time violators of the Board's regulations to avoid the expense of an administrative hearing by agreeing to accept a prescribed penalty; and
4. To provide guidance to licensees in situations not covered by other chapters.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

With one exception, these changes merely bring the board's regulations into conformance with mandates of the General Assembly. The changes to the price change reporting eliminate unnecessary reporting by licensees.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The Alcoholic Beverage Control Board intends to amend three sections of this regulation. In 3 VAC 5-70-100, subsection A would be amended to allow gifts of alcoholic beverages at tasting events at the premises of retail licensees. Current provisions restrict this activity to wine and beer wholesalers and gourmet shop licensees. This action removes a conflict between current regulations and recent action of the General Assembly. Subsection B of 3 VAC 5-70-150 would be amended by the addition of language exempting licensees who are both the importer and wholesaler of a product from having to notify themselves of price increases. Subsection C of 3 VAC 5-70-160 would be amended to increase from 2 to 5 the number of remote retail outlets allowed a farm winery. This change is necessitated by a recent action of the General Assembly. In addition, a new section would be added, prescribing the procedures to be followed in selling designer or vintage spirits bottles at auction. The Alcoholic Beverage Control Board has determined that this action will allow industry members greater flexibility in the marketing and sale of their products, while ensuring that the health, safety, or welfare of citizens is protected through the maintenance of adequate controls on the transportation and sale of alcoholic beverages.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory action. Most of the changes are designed to conform the board's regulations to statutory amendments

passed by the General Assembly. The primary advantages are to manufacturers who will no longer have to provide copies of price increase notices to the board, and to wholesalers who also serve as importers for products who will not have to go through the unnecessary exercise of notifying themselves of price increases.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposal does not add any restrictions, so none exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected by the proposed regulation.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The proposals either bring regulations into line with statutes or lessen reporting requirements. There are no adverse impacts on small business.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and	None
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enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	Alcoholic beverage manufacturers, wholesalers, and retailers will primarily be affected.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are approximately 14,000 establishments licensed by the board. It is estimated that at least 95% of these would meet the definition of small business.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	None

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Other than the recommended amendments to the regulation, the Board did not identify any alternatives for achieving the purpose of the existing regulation. Most of the changes merely track new statutes.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not expected that this regulatory action will have any impact on the institution of the family.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
3 VAC 5-70-100		Gifts of alcoholic beverages are only allowed as provided in this section	Gifts of alcoholic beverages are allowed as provided in this section or as provided in §§4.1-201, 4.1-201.1 , 4.1-209, 4.1-325, and 4.1-325.2 of the Code of Virginia. The additional references reflect statutory provisions allowing licensees to make gifts of alcoholic beverages.
3 VAC 5-70-150		Wineries and breweries must send copies of price increase notices to the board	Provision repealed as unnecessary.
		Importers must give 30 days notice of price increases to wholesalers	Exemption created where importer and wholesaler are the same person
3 VAC 5-70-160		Farm wineries may operate at two remote retail locations	Farm wineries may operate at five remote retail locations, as allowed by statute.
	3 VAC 5-70-230		New section allowing auction sales of designer or vintage bottles containing spirits. Seller must notify board of date, time and place of sale. Bottle must be unopened and seals intact. Auction must be conducted in accordance with Chapter 6 of Title 54.1 of the Code of Virginia. Purchaser must be at least 21. Auctioneer must maintain records of sale for 2 years.

Enter any other statement here